

Subject: Criminal Discovery

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I realize I'm only a lowly sole criminal practitioner. But I've always prided myself on my contribution to the criminal justice system by being willing to represent those defendants that cannot afford to retain an attorney. Without such willing souls, the system slows to a crawl. Obviously the system is weighted heavily against the appointed counsel. We simply do not have the resources that are generally at prosecutors' disposal. Fortunately, despite rules to the contrary, district courts often permit discovery in both misdemeanor and felony cases. The suggestion that the MSC would bar pre-exam in felony cases shows an absolute for judicial economy. Now a small percentage of cases actually goes to exam. If you eliminate pre-exam discovery, you assure more exams will be held, if for no other reason – defense discovery. The reality is that you are seeking to limit the defendant's own attorney from obtaining the same information that most media outlet can obtain with a simple FOIA request. Making more work for the already grossly underpaid and overworked public defenders is also contrary to assuring the full and proper protected of the accused's rights. Yes, I know, most of them are "guilty" so there's no problem. But in reality, again, we should be concerned with the accused that is actually innocent and giving them a fair shot "proving" their innocence. Many times the only real opportunity for that is at exam BEFORE the cost of defense escalates. I urge the court not to limit defenses access to discovery in felonies but instead to expend access in ALL criminal cases. It will at least shorten trials and most likely help defense counsel determine better when to recommend that a defendant should plead. Thank you.

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